

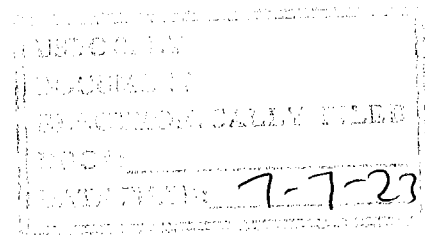
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JESUS FERNANDEZ,

Plaintiff,

v.

MARIA BADAMI, Physician's Assistant,
Defendant.
-----X



ORDER

20 CV 10287-(VB)

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti

Plaintiff, who is proceeding pro se and in forma pauperis, commenced this action by filing a complaint on December 3, 2020. (Doc. #1). At that time, plaintiff was incarcerated at Bare Hill Correctional Facility ("Bare Hill"). (See id. at 1). Approximately one month later, plaintiff filed an amended complaint, again listing Bare Hill as his address. (See Doc. #5 at 1).

In a January 28, 2021, Order granting plaintiff's application to proceed in forma pauperis, then-Chief District Judge McMahon stated plaintiff must promptly notify the Court in writing if his address changes, and that the Court may dismiss this action if plaintiff fails to do so. (Doc. #6 at 2).

Plaintiff's obligation to notify the Court if his address changes, and the risk of dismissal if plaintiff failed to comply, were reiterated in two documents the Court mailed to plaintiff February 2021: an Order of Service dated February 3, 2021 (Doc. #8 at 2) and an "Instructions for Litigants Who Do Not Have Attorneys" pamphlet (Doc. #10 at ECF 2), which were accompanied by a blank "Notice of Change of Address" form. (Doc. #10 at ECF 2).

In an Amended Order of Service dated April 6, 2021, the Court again reminded plaintiff of this obligation and the risk of dismissal for failure to comply. (Doc. #15 at 2).

On September 19, 2022, defendant Maria Badami moved to dismiss the amended complaint. (Doc. #42). On October 3, 2022, plaintiff submitted an opposition to defendant's motion to dismiss. (Doc. #44). Plaintiff listed his address as Bare Hill. (See id. at 1).

On April 17, 2023, the Court granted in part and denied in part defendant Badami's motion to dismiss. (Doc. #46). The same day, by separate order, the Court scheduled an initial conference for May 31, 2023, at 9:30 a.m., and instructed plaintiff and defense counsel to attend the conference via telephone. (Doc. #47). Copies of both orders were mailed to plaintiff at his Bare Hill address.

On May 2, 2023, the Court's mailing to plaintiff of the April 17 scheduling order was returned with a note indicating plaintiff is no longer at Bare Hill and had been released from Orleans Correctional Facility ("Orleans") on April 13, 2023. The note did not provide plaintiff's current address, but stated Bare Hill sent a copy of the scheduling order to Orleans for forwarding to the address plaintiff provided at release.

On May 4, 2023, the Court issued an order which warned plaintiff, in bold typeface, that if he failed to notify the Court of his current mailing address, the Court may dismiss this case for

failure to comply with a Court order or for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. #49). The Court also reminded plaintiff of his obligation to attend the telephone conference on May 31, 2023, and again provided instructions on how to attend the conference. (Id.).

On May 12, 2023, the Court received notice that its May 4 Order, which was mailed to plaintiff at Orleans Correctional Facility for forwarding, was returned as undeliverable.

On May 31, 2023, the Court held an on-the-record conference via telephone, as scheduled. Plaintiff neither appeared nor updated his address by that date. During the conference, and as memorialized in a letter filed by defense counsel later that day (Doc. #50), defense counsel advised the Court that on May 2, 2023, he mailed a letter to plaintiff at an address he obtained from the Department of Corrections and Community Supervision (“DOCCS”), reminding plaintiff to update his address and attend the May 31 conference. Soon thereafter, in early May 2023, plaintiff called defense counsel, who again reminded plaintiff to update his address and attend the May 31 conference.

On June 1, 2023, the Court issued an order scheduling another conference for July 5, 2023, warning plaintiff that it will deem this action abandoned and dismiss it pursuant to Rule 41(b) if plaintiff fails to update his address in writing by July 5, 2023, and does not appear at the July 5 conference, without excuse or explanation. The Court’s June 1 Order was mailed to plaintiff at 1730 Andrews Avenue, Apt. 1C, Bronx, NY 10453, which is the address DOCCS gave to defense counsel and is believed to be plaintiff’s current address. (See Doc. #50-1).

Although defense counsel attended the July 5 conference, plaintiff failed to appear without excuse or explanation. Moreover, to date, plaintiff has still not updated his address.

Accordingly, and as discussed at the telephone conference held on July 5, 2023, the Court dismisses this action for plaintiff’s failure to comply with Court orders and failure to prosecute. See Fed. R. Civ. P. 41(b).

The Clerk is instructed to close this case.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at 1730 Andrew Avenue, Apt. 10C, Bronx, NY 10453.

Dated: July 7, 2023
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge